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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 384

PUBLISHERS' ASSOCIATION OF NEW YORK CITY (on behalf of its member, THE NEW YORK TIMES COMPANY), *Petitioner*,

v.

NEW YORK MAILERS' UNION NUMBER SIX, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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Respondent, New York Mailers' Union Number Six, submits this brief in order (1) to inform the Court more precisely and accurately of the question presented by the judgment below sought to be reviewed, and (2) to oppose the petition herein as improvident.

Petitioner's statement of the question presented, even if one accepts the imperfect form of its general casting, completely elides the crucial point in the Court of Appeals decision. It held that, while the acts enjoined by the District Court did not fall within Sec. 4* of the Norris-LaGuardia Act, they nevertheless involved and grew out of a Sec. 13 "labor dispute" and therefore were governed by the unsatisfied jurisdictional requirements of Section 7 of that Act.

The question actually presented is whether, notwithstanding that this case involves a "labor dispute" within the meaning of § 13 of the Norris-LaGuardia Act, the District Court may enjoin the operation of internal union disciplinary proceedings without meeting the conditions prescribed in Section 7 of that Act. As the court below correctly held, this question has already been answered in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195. "The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act." 370 U.S. at 213. In the face of this general holding with respect to "anti-injunction provisions" petitioner's claim that the *Sinclair* holding was limited to the prohibitions of Section 4 of Norris-LaGuardia is simply untenable.

The factual context in which the case arose is amply set out in petitioner's Statement of the Case, with a

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* Respondent had pleaded and argued below that the acts were covered by Sec. 4(b) in that they were essential, integral incidents of Kelly's and Rowan's "becoming and remaining" members of respondent Union. Both courts below erroneously, we think, rejected that contention. Should this Court grant the petition herein, respondent wishes to reserve that contention for review and for support of the judgment below. See *Walling* v. *General Industries Co.*, 330 U.S. 545, 547.

single but vital exception. It fails to make clear that the Union acts enjoined by the District Court were internal *investigatory* proceedings required by the Union constitution and bylaws to be initiated against its member, foreman Rowan, upon a charge filed against him by a fellow member, Kelly, looking toward Rowan's possible discipline for his alleged misconduct toward Kelley while acting as the latter's foreman. As such, the acts so enjoined by the District Court "until the (ordered) arbitration could be heard and decided," as petitioner puts it, were explicitly found by the Court of Appeals to have involved and grown out of a labor dispute.

The unanimous opinion of the Court of Appeals in reversing the order of the District Court "to the extent that it enjoins the action of the Union", contrary to the prohibitions of Sec. 7 of Norris-LaGuardia, is thoroughly clear and correctly to the point. Petitioner's critical analysis of the Court of Appeals decision, and the stated Reasons for Granting the Writ, merely attempt to revive unavailing arguments urged upon this Court and laid to rest in *Sinclair*.

Petitioner's present reprise on the points thus adjudicated, notwithstanding *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957), is but plaintive commentary on disappointed views already fully expressed that the cause of arbitration might be further advanced if the bars on *all* labor injunctions were lowered. But even on this score petitioner's espousal of the cause of arbitration seems more academic than real. At no time since November 20, 1962, when the District Court ordered arbitration, and despite the Court of Appeals' affirmance thereof, has petitioner moved the dispute to hearing and determination by

that expeditious process. Indeed respondent has at all times refrained at petitioner's request from taking the disputed action open to it since freed from injunction by the Court of Appeals decision of May 20, 1963. It ill. behooves petitioner to burden this Court with its plea of right to injunctive relief "ancillary" to an arbitration which inexplicably it has stalled for almost one year. The injunction would seem to be the end in itself to be desired, else it is doubtful that an actual, justiciable controversy exists at all.

In all events, however important the question of federal law presented may once have been, it was definitely settled by this Court in *Sinclair, supra.* The decision of the Court of Appeals herein sought to be brought up for review is in no way in conflict with the settled doctrine of *Sinclair* or with any other applicable decisions of this Court, but indeed conforms therewith exactly in principle and logic, *a fortiori.* Finally, the petition alleges no conflict, between the instant decision and that of any other Court of Appeals on the same matter.

For all the foregoing reasons, and no other proper or sufficient consideration appearing to move this Court's sound judicial discretion, the petition should be denied.

Respectfully submitted,

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